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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

Alice O Kiely 7590 06/05/2008
71 Stonewall Court
Yorktown Heights, NY 10598-1819

EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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06/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/641,410	Applicant(s) O'DONNELL-KIELY, ALICE MARY
Examiner JYOTI CHAWLA	Art Unit 1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: 319-348.
Claim(s) rejected: 319-348.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794

Continuation of 3. NOTE: The applicant is advised to read MPEP 714.12 and 714.13. In particular "Once a final rejection that is not premature has been entered in an application, applicant or patent owner no longer has any right to unrestricted further prosecution. This does not mean that no further amendment or argument will be considered. Any amendment that will place the application either in condition for allowance or in better form for appeal may be entered. Also, amendments complying with objections or requirements as to form are to be permitted after final action in accordance with 37 CFR 1.116(b). Ordinarily, amendments filed after the final action are not entered unless approved by the examiner" Applicant is also advised to read 706.07, which concerns Final Office Actions, and discourages Applicants from switching from subject matter to subject matter, as done by Applicant from the Original Claims to the Amended Claims.

Applicant has amended the claims after reviewing Examiner's statements in the Response to Arguments section of the Final Office Action. These were statements in response to Applicant's arguments. The Response to arguments neither stated nor suggested any claim language that would place the application in condition for allowance.

Claims 319-348 that were examined in the final office action dated April 30, 2008 have been amended. Amendment to claims 319-348 filed May 16, 2008 have also not been entered as it raises new issues of search and consideration and also regarding new matter and indefiniteness.

Following are some of the examples of issues raised by the amendment:

- 1) The independent claims 319 and 345, have been amended from "Support for a frozen comestible comprising two edible ingredient materials" to "Support for a frozen comestible comprising two an edible composite material " changing the scope of the invention as ingredient materials as examined in the final office action of 4/30/2008 are not the same as composite materials. Similarly other independent claims 332 and 338 have also been amended to include "a single component" and "composite material comprises a bite size ingredient , a support, a handle or a combination thereof", which were not examined in the rejected claims and raise issues that require further search and/or consideration.
- 2) Dependent claim 326 has been amended from "The support for a frozen comestible of claim 319, wherein each of the two ingredient materials comprise candy...or fruit" to "The support for a frozen comestible of claim 319, wherein said edible composite material comprises of two ingredient materials, wherein each of the two ingredient materials comprise candy...or fruit".
- 3) Claim 327 has been amended to include the term "a single component" which comprises of two ingredient materials, which was not examined in the final office action. Similarly claim 328 has been amended to include "two ingredient materials comprise an edible confection bar", which were not recited in the rejected claims. Thus the amendment to the claims 319-348 raises new issues and requires new search and/or consideration.
- 4) Amendment to claim 327 among other recites "a single component" and as recited it is unclear whether a single component is different from a composite material or is it the same which renders the claim indefinite.
- 5) The newly added terms, such as , a single component, composite material comprising a bite size ingredient etc have not been defined in the claims and raise issues of new matter, as recited in the amended claims.

There are several other similar issues in the newly amended claims that would require further search and/or consideration.

Continuation of 13. Other: The amendment to specification of May 16, 2008 has also not been entered because of the following reasons: Regarding the addition of "composite material to the specification, it is noted that the applicant may have support for the generic term "composite material" in the original claims 6 and 19, however, the disclosure does not support that a multi ingredient candy bar comprises composite material as recited. Further regarding the disclosure of prior art in paragraph [0013], the addition of phrase does not contain...a composite material" adds new matter to the original disclosure. Furthermore, the disclosure of composite material adopted from original claims was directed to claims regarding the present invention and not the prior art. Thus, for the reasons given above the amendment to specification dated May 16, 2008 has not been entered.